IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 534 of 1999

with
SPECIAL CIVIL APPLICATION NO. 544 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VALIBEN KARSANBHAI WADI
Versus
STATE OF GUJARAT

Appearance:
HL PATEL ADVOCATES for Petitioner

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 06/03/2000

ORAL JUDGEMENT

Both these petitions are filed for quashing and setting aside the orders passed by the Collector, Kutch at Bhuj dated January 18, 1999, Annexure `B' to the petitions.

The case of the petitioners was that petitioner of SCA No. 534 of 1999 was elected candidate from ward No. 7 . Similarly, petitioner of SCA No.544 of 1999 was also elected candidate from ward No.7 of Bhachau Nagar Palika, Bhachau. It was alleged against the petitioners that

they were absent continuously for a period of more than four months and they had, therefore, ceased to be councillors and their offices became vacant.

Show cause notices were issued to them by the Collector on October 12, 1998. Petitioners replied them. After considering the facts and circumstances as also evidence on record, the Collector recorded a finding that both the petitioners were absent continuously for five months. In these circumstances, they had committed default and their cases fell within the mischief of sub-section (1) of Section 39 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as `the Act'). Section 39 of the Act reads as under :

"39. (1) Any councilor who during his term of office-

(a) absents himself for more than three consecutive months from the municipal borough unless leave not exceeding four months so to absent himself has been granted by the municipality, or

(b) absents himself for four consecutive months from the meetings of the municipality without the leave of the municipality,

shall cease to be a councillor and his office shall be vacant.

(2) x x x x

(3) x x x x".

Reading sub-section (1) of Section 39, it becomes clear that if a councillor absents himself for four consecutive months from the meeting of the Municipality, without

leave of the Municipality, he/she shall cease to be councillor and his/her office would fall vacant. In the light of the evidence before the authority , a conclusion

was arrived at that both the petitioners had remained absent for a period of more than four months and their cases were covered by Section 39 (1) of the Act.

The said finding is a finding of fact which cannot be interfered with in exercise of power under Article 226/227 of the Constitution of India. If such a finding is accepted, it is obvious that both of them remained absent continuously for more than four months and their cases,therefore, were covered by sub-section (1) of Section 39 of the Act.

It was, no doubt, argued at the time of hearing of these petitions that the hearing of cases was preponed inasmuch as,though on January 4, 1999 i.e. the day on which both the matters were fixed for hearing, the Collector had to go out of station for administrative work. The matters were,therefore, adjourned to January 25, 1999. It was contended that the said date was preponed and matters were decided on January 18, 1999 which was contrary to law and the said action was taken at the behest of Ex-Minister Babubhai Meghjibhai Shah. Apart from the fact that neither Babubhai has been joined as party respondent nor any material whatsoever has been placed on record to substantiate mala fide on the part of Babubhai or Collector even on merits , there does not appear to be any mala fide.. Regarding preponing of date of hearing, in the facts and circumstances, in my opinion, no

prejudice can be said to have been caused to the petitioners. It is an admitted fact that on January 4, 1999, Collector had to go out and the matters were ordered to be adjourned to January 25, 1999. But in view of the fact that the matters were of considerable importance, ultimately, the date was changed to January 11, 1999, and communications were sent to the petitioners to that effect. Again, on January 11, 1999, matters could not be proceeded with and they were adjourned to January 16, 1999. Advocates were also informed. Again, adjournment was prayed on behalf of the petitioners which was granted and as a last chance, the matters were adjourned to January 18, 1999. On that day, advocates remained present and after hearing the parties, orders were passed. Therefore, it cannot be contended that by deciding the matters on January 18, 1999, instead of January 25, 1999 to which they were adjourned initially, prejudice or injustice was caused to the petitioners.

Since orders were passed after hearing the parties and as the relevant conditions and requirements of sub-section (1) of Section 39 of the Act were complied with, it

cannot be said that the orders could not have been passed by the Collector or they are otherwise arbitrary or unreasonable.

Since I see no reason to interfere with the said orders, the petition deserves to be dismissed and are accordingly dismissed. No costs.

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parekh